Region 2 (NV) - USFS Reasons for Rejection ***Applicant/Proponent (SF-299) Response***

#1 – USFS REASON NOT IN PUBLIC INTEREST. Prevent 'unsuitable or inconsistent' project from proceeding to full-scale applications requiring environmental analysis (See 63 Fed. Reg. 65,954 (Nov 30, 1998); See also 36 CFR 251.54e(6) (a proposal that does not pass initial and second level screening does not require environmental analysis and documentation.

APPLICANT RESPONSE. USFS deems it to be "inconsistent and unsuitable" per Federal Registrar (1998). They quote a CFR stating that they do not have to do 'environmental analysis and documentation' if it doesn't pass screening (e.g. not in public interest in USFS view) indicating unwillingness to do environmental analysis which is part of the USFS responsibility. If resources are limited developers can fund studies as done by DOI/BLM.

#2 – USFS REASON NOT IN PUBLIC INTEREST. The Initial screening criteria includes the requirement that the propose use be consistent or can be made consistent with the applicable land management plan. USFS states that screening is required for both proposals for wind energy site testing and feasibility and proposals for wind energy facilities. A wind energy site testing and feasibility permit is a precursor to a wind energy facility permit.

APPLICANT RESPONSE. The USFS Wind Directive is extremely clear in stating:

"analysis for each type of wind energy permit should address only the proposed land use under consideration".

USFS has recently chosen to not evaluate/address wind turbines (different proposed land use) when considering small temporary research towers to determine the feasibility of producing wind energy. The Forest Service Handbook (FSH) is clear. It says:

FSH 75.1. Site testing and feasibility permits (sec. 75.1). These permits are issued for the installation, operation, and removal of METs or other instruments to gather data regarding the wind resource and to determine the feasibility of producing wind energy.

FSH 75.2. Construction and operation permit (sec. 75.2). These permits are issued for the construction, operation, and removal of a wind energy facility. Proponents must establish the feasibility of successfully producing wind energy within a proposed project area.

Environmental analyses for each type of wind energy permit should address only the proposed land use under consideration for authorization by the permit and connected actions essential to enabling that use.

#3 – USFS REASON NOT IN PUBLIC INTEREST. A wind energy site testing and feasibility permit is a precursor to a wind energy facility permit. Proponents for a wind energy facility permit must establish the feasibility of successfully producing wind energy within a proposed project areas before they may be issued a wind energy facility permit for that area. Therefore, it is necessary and appropriate to screen the area proposed for wind energy site testing and feasibility for suitability for a wind energy facility, not just for wind energy site testing and feasibility.

It would make no sense to accept a proposal for wind energy site testing and feasibility in an area that could not be authorized under a wind energy facility permit, for example because authorizing a wind energy facility in that location would be inconsistent with the applicable land management plan or would be inconsistent or incompatible with the purpose for which the lands are managed……would be inconsistent with the purpose of screening proposals to prevent unsuitable or inconsistent projects from proceeding to full-scale applications requiring environmental analysis.

> **APPLICANT RESPONSE. The idea of research towers being a precursor to wind turbines is a new concept in USFS. It violates the intent of the USFS Wind Directive and is counter to industry practice in County Ordinances, States and other Federal Agencies (DOI/BLM, DOE and DOD). It violates the intent of the Wind Directive and the purpose of screening. It is neither necessary nor appropriate**
>
> **USFS says it 'makes no sense' to install temporary towers because for example, and they give one example (it's specious) that it would be inconsistent with the Land Resource Management Plans (LRMP's). Two points:**
>
> 1. **LRMP's can change. USFS assumes they never will. and 1-3 years of wind is required.**
> 2. **BLM revised 60 of the Land Management Plans 10 years ago as part of a Programmatic EIR led by DOE. USFS refused then and will not talk about it now.**
>   - **Investors will take informed risks of the probability of Programmatic LRMP Amendments as done by BLM in 2 years (2006-2008) allowing their policy to attract developer interest**
>
> **Unwillingness of USFS to address this critical issue is one of the Critical Success Factors and a Fatal Flaw recognized by USFS, perhaps not USDA.**

USFS states applicants "must establish the feasibility of successfully producing wind" yet they will not permit small temporary towers to establish feasibility making it circular reasoning.

- **What is USFS requirement for an Applicant to prove to USFS they can produce energy successfully? If it is wind data or economics it is proprietary.**
- **Based on average wind speed or Capacity Factor for which turbine model?**
- **Construction/O&M costs, Financing cost, Internal Rate of Return?**
- **Who in USFS (NREL) are evaluating the wind data that must be given to USFS and for what purpose if not public solicitations (i.e. 'poison pill')?**
  - **Imagine you are a gold prospector who finds gold after 1-2 years and $100,000 then goes to the County to acquire the land. The County says to get 'site control' you must give us the proof of where the gold and we have the right use it in a public solicitation.**
  - **A District Ranger (Donn Christianson/Cleveland) tole me and 2 tribal member that yes USFS could use the data he demanded in a public solicitation.**
  - **I explained this to Mr. Greg Smith Esq in DC who managed the process of creating the Wind Directive about his. He said "that wasn't our intention". I said Mr. Smith banks don't care about intentions.**

- **Lacking Right of Appeal to USFS (USDA allows it) our only recourse is news media, more letters from Congressmen and a formal lawsuit which is our legal right and a method that has been shown to work as demonstrated below.**

U.S. Forest Service sued over Nestle water permit - The Desert Sun

Oct 13, 2015 - Three advocacy groups are suing the **U.S. Forest Service**, accusing the agency of breaking federal laws by allowing Nestle – the largest bottled water ... a proposed action for the issuance of a new Nestle permit which the public will then be invited to review and comment on before next **steps** are taken.".

Nestle can keep piping water from national forest, despite permit that ...

Sep 21, 2016 - READ MORE: Activists protest Nestle bottling plant outside **lawsuit**. Nestle hailed Tuesday's ruling as a victory. "While Nestle Waters is not a party to the case, we are pleased that today's ruling confirms the **United States Forest Service** can continue to move forward with the permit renewal**process** related to ...

#4 – INCONSISTENT WITH THE 1986 TOIYABE NATIONAL FOREST LAND AND RESOURCE MANAGEMENT PLAN, contra 36 CFR 251.54(e)(1)(ii):

One of the standards in the applicable land management plan states, "do not grant new rights-of-way" and "do not authorize utility scale commercial wind energy facilities.". Wind development would be inconsistent with this existing management direction and therefore would be inconsistent with the applicable land management plan.

APPLICANT RESPONSE. It is extremely unlikely that a 1986 Land Management Plan would specifically exclude commercial wind energy as it was almost nonexistent 31 years ago

The USFS is selectively picking sentences which ignore context and is unwilling to provide the contest. They say one of the applicable management plans states, "do not grant new rights-of-way.. It is extremely unlikely that no Rights-of-Way grants have been issues in 31 years. Do the other applicable management plans state something different. Will USFS provide all of the management plans that are applicable

#5 – DESIGNATED AS SEMI-PRIMITIVE AND NON-MOTORIZED.

APPLICANT RESPONSE. It is extremely unlikely that a 1986 Land Management Plan would specifically exclude commercial wind energy as it was almost nonexistent 31 years ago

The USFS is selectively picking sentences which ignore context and is unwilling to provide the contest. They say one of the applicable management plans states, "do not grant new rights-of-way.. It is extremely unlikely that no Rights-of-Way grants have been issues in 31 years. Do the other applicable management plans state something different. Will USFS provide all of the management plans that are applicable

USDA United States Department of Agriculture | Forest Service | Humboldt-Toiyabe National Forest | Bridgeport Ranger District
HC 62 Box 1000
Bridgeport, CA 93517
760-932-7070

File Code: 2700
Date: July 13, 2017

Scott Debenham
President
Debenham Energy, LLC
9539 Medina Drive
Santee, CA 92017

Dear Mr. Debenham:

This letter responds to the special use proposal dated May 15, 2017, revised May 22, 2017, submitted by Debenham Energy, LLC, for a wind energy site testing and feasibility permit in the Bridgeport Ranger District of the Humboldt-Toiyabe National Forest.

The proposed site for the permit is located on the Wassuk Range approximately 30 miles east of Bridgeport, California, and approximately 5 miles west of the Hawthorne Army Depot, in the Nevada portion of the ranger district.

#1

General requirements and direction for special use proposals, including initial and second-level screening, apply to the authorization of wind energy land uses. Forest Service Handbook (FSH) 2709.11, Ch. 70, introductory paragraph. Proposals for both wind energy site testing and feasibility and proposals for wind energy facilities must pass initial and second-level screening under Forest Service regulations and directives. FSH 2709.11, Ch. 70, sec. 72.2. The purpose of screening of proposals is to prevent unsuitable or inconsistent projects from proceeding to full-scale applications requiring environmental analysis. *See* 63 Fed. Reg. 65,954 (Nov. 30, 1998); *see also* 36 CFR 251.54(e)(6) (a proposal that does not pass initial and second-level screening does not require environmental analysis and documentation).

#2

The requirements and criteria for initial screening are found in Forest Service regulations and directives at 36 CFR 251.54(e)(1) and FSH 2709.11, Chapter 10, sections 11.2, paragraph 1, and 12.2. The initial screening criteria include the requirement that the proposed use be consistent or can be made consistent with the applicable land management plan. 36 CFR 251.54(e)(1)(ii); FSH 2709.11, Ch. 10, sec. 12.21, para. 2; *see also* FSH 2709.11, Ch. 70, sec. 72.21.

Screening is required for both proposals for wind energy site testing and feasibility and proposals for wind energy facilities. A wind energy site testing and feasibility permit is a precursor to a wind energy facility permit. Proponents for a wind energy facility permit must establish the feasibility of successfully producing wind energy within a proposed project area before they may be issued a wind energy facility permit for that area. FSH 2709.11, Ch. 70, sec. 71, para. 2. Therefore, it is necessary and appropriate to screen the area proposed for wind energy site testing and feasibility for suitability for a wind energy facility, not just for wind energy site testing and feasibility. It would make no sense to accept a proposal for wind energy site testing and feasibility in an area that could not be authorized under a wind energy facility permit, for

#3

#3

example, because authorizing a wind energy facility in that location would be inconsistent with the applicable land management plan or would be inconsistent or incompatible with the purposes for which the lands are managed. Furthermore, accepting a proposal for wind energy site testing and feasibility in an area that could not be authorized under a wind energy facility permit would be inconsistent with the purpose of screening of proposals to prevent unsuitable or inconsistent projects from proceeding to full-scale applications requiring environmental analysis.

Your proposal was screened using the initial screening criteria in Forest Service regulations at 36 CFR 251.54(e)(1)(i)-(ix). Your proposal fails to meet the initial screening criteria.

#4

In particular, you have requested a wind energy site testing and feasibility permit for National Forest System lands where wind energy development would be inconsistent with the 1986 Toiyabe National Forest Land and Resource Management Plan, contra 36 CFR 251.54(e)(1)(ii):

Which one? Does it conflict with one of the other standards referenced?

#4

- One of the standards in the applicable land management plan states, "do not grant new right-of-ways" and "do not authorize utility-scale commercial wind energy facilities." Wind energy development would be inconsistent with this existing management direction and therefore would be inconsistent with the applicable land management plan.

- Your proposed site is within the recreation opportunity spectrum designated as semi-primitive non-motorized. Wind energy development would be inconsistent with this existing management direction and therefore would be inconsistent with the applicable land management plan.

#5

I am returning your proposal and associated attachments. Per 36 CFR 214.4 and 214.5, this denial is not subject to administrative appeal.

If you have any questions, I can be reached at 760-932-5801 or jmarshall02@fs.fed.us.

Sincerely,

JEREMY MARSHALL
District Ranger

Enclosures:
N-5 Powell Proposal 5-15-17 Debenham Energy
N-5 Powell Revised Proposal 5-22-2017 Debenham Energy